

Condensed Title:

A Resolution approving on First Reading the request of La Gorce Country Club (and related City application) for vacation of a portion of West 57th Street easterly of Alton Road setting a Public Hearing to be held concurrent with Second and Final Reading of the City's Resolution approving the subject vacation to be held at the City Commission meeting of March 18, 2009 for purposes of obtaining public comment thereon.

Key Intended Outcome Supported:

N/A

Supporting Data (Surveys, Environmental Scan, etc.): N/A

Issue:

Shall the Mayor and City Commission approve the Resolution?

Item Summary/Recommendation:


On January 28, 2009, the Miami Beach City Commission unanimously passed its Resolution No. 2009-26995 approving and accepting a Settlement Agreement in Frank Otero and Jeffrey Gibbs vs. City of Miami Beach, La Gorce Country Club and DM Fence Corp., 11th Jud. Cir. Ct., Case No.: 05-17754 CA 30; this lawsuit was filed by two owners of lots abutting the La Gorce Country Club who sought various forms of relief including a declaration of boundary/title with regard to the street-ends running perpendicular to the boundaries of the La Gorce Golf Course, said street-ends bordering easterly of Alton Road and located at West 52nd Street, West 53rd Street, West 54th Street, West 56th Street, West 57th Street, West 58th Street, West 59th Street, and West 60th Street, as well as those street-ends bordering westerly on La Gorce Drive and located at West 58th Street, West 59th Street, West 60th Street and West 61st Street.

The Country Club timely filed its request for vacation, and this matter is now within the jurisdiction of the Planning Board to be heard after their February 24, 2009 meeting.

As required by City Code, the Planning Department Analysis is attached. Findings of the analysis are that the request is consistent with the necessary findings to merit approval.

In the event the Planning Board approves the request for vacation, it is recommended that the City Commission also approve the request.

Advisory Board Recommendation:**Financial Information:**

Source of Funds:		Amount	Account
 OBPI	1		
	2		
	3		
	Total		

Financial Impact Summary:**City Clerk's Office Legislative Tracking:**

Robert C. Middaugh, Assistant City Manager

Sign-Offs:

Department Director	Assistant City Manager	City Manager
	RCM 	JMG 

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MIAMI BEACH



COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: February 25, 2009

SUBJECT: **A RESOLUTION APPROVING ON FIRST READING THE REQUEST OF LA GORCE COUNTRY CLUB (AND RELATED CITY APPLICATION) FOR VACATION OF A PORTION OF WEST 57TH STREET EASTERLY OF ALTON ROAD LOCATED IN THE CITY OF MIAMI BEACH, PROVIDING FOR WAIVER OF VACATION APPLICATION FEE AND WAIVER BY 5/7THS VOTE OF THE COMPETITIVE BIDDING AND APPRAISAL REQUIREMENTS (AS PROVIDED IN SECTION 82-39 OF THE MIAMI BEACH CITY CODE), FINDING SUCH WAIVER TO SERVE THE CITY'S BEST INTEREST, AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE ANY AND ALL DOCUMENTS TO EFFECTUATE THIS VACATION INCLUDING A QUIT CLAIM DEED AND UTILITY EASEMENT; SETTING A PUBLIC HEARING TO BE HELD CONCURRENT WITH SECOND AND FINAL READING OF THE CITY'S RESOLUTION APPROVING THE SUBJECT VACATION TO BE HELD AT THE CITY COMMISSION MEETING OF MARCH 18, 2009 FOR PURPOSES OF OBTAINING PUBLIC COMMENT THEREON.**

ADMINISTRATION RECOMMENDATION

Approve the Resolution.

ANALYSIS

On January 28, 2009, the Miami Beach City Commission unanimously passed its Resolution No. 2009-26995 approving and accepting a Settlement Agreement in Frank Otero and Jeffrey Gibbs vs. City of Miami Beach, La Gorce Country Club and DM Fence Corp., 11th Jud. Cir. Ct., Case No.: 05-17754 CA 30; this lawsuit was filed by two owners of lots abutting the La Gorce Country Club who sought various forms of relief including a declaration of boundary/title with regard to the street-ends running perpendicular to the boundaries of the La Gorce Golf Course, said street-ends bordering easterly of Alton Road and located at West 52nd Street, West 53rd Street, West 54th Street, West 56th Street, West 57th Street, West 58th Street, West 59th Street, and West 60th Street, as well as those street-ends bordering westerly on La Gorce Drive and located at West 58th Street, West 59th Street, West 60th Street and West 61st Street. The Settlement Agreement provided for the following to occur upon execution of the Agreement:

-La Gorce Country Club will request partial vacation of West 57th Street easterly of Alton Road, and City will consider said application pursuant to conditions established in City Charter and Code which require 4/7ths approval of Planning Board and 5/7ths approval

of the City Commission, agreeing to waive application fee, as well as appraisal and bidding by 5/7ths Commission vote at time of vacation proceedings (or assume appraisal cost absent a waiver), and further reserving to City a perpetual easement for utilities; etc.;

-If vacation is approved, City will deliver to La Gorce a quit claim deed for the subject portion of West 57th Street and the City resolution approving vacation, and La Gorce will deliver to the City a utility easement over the vacated portion of West 57th Street; La Gorce will also deliver to City a quit claim deed for eleven of the subject 20 foot strips of land in dispute bordering easterly of Alton Road and located at West 52nd Street, West 53rd Street, West 54th Street, West 56th Street, West 58th Street, West 59th Street, and West 60th Street, and further bordering westerly of La Gorce Drive and located at West 58th Street, West 59th Street, West 60th Street and West 61st Street;

-those portions of La Gorce's fence encroaching upon the City right-of-ways will be removed from the public right-of-ways and resituated by the City (at city expense) to the respective perimeter portion of the La Gorce's property;

-for purposes of establishing a procedure for any homeowner complaining of view obstruction by La Gorce, said homeowner shall submit a written complaint to La Gorce and if view dispute has not been resolved after thirty days from submittal of said complaint, the homeowner may then submit a written complaint to the City for investigation and response within forty-five days; and

-upon accomplishment of above in accordance with time frames more specifically set forth within the Settlement Agreement, Plaintiff Gibbs will file a dismissal of lawsuit with prejudice, all parties to assume their own costs and fees.

The City's historical use of the subject portion of West 57th Street has been for placement of underground utilities, which use will continue in the event vacation is approved via the grant by La Gorce to the City of a perpetual Utility Easement.

The Country Club timely filed its request for vacation, and this matter is now within the jurisdiction of the Planning Board to be heard after their February 24, 2009 meeting.

Planning Department Analysis

As required by City Code, the Planning Department Analysis is attached. Findings of the analysis are that the request is consistent with the necessary findings to merit approval.

CONCLUSION

In the event the Planning Board approves the request for vacation, it is recommended that the City Commission also approve the request.

Approval of the request for vacation of the subject portion of West 57th Street will result in final resolution of the long-standing and costly litigation between the City, La Gorce and surrounding homeowners concerning ownership of the street-end properties (City will obtain clear title), the rights of homeowners concerning views of the Country Club's golf course (procedure for view complaints established in Agreement), as well as City's and homeowners' use of the street-end properties (City will relocate the fences bordering the street-ends, ensuring surrounding homeowners greater access and views to their private properties, as well as providing City/public access to said street-end properties). Moreover, in the event the vacation is approved, La Gorce will deed to the City eleven of the 20 foot strips of land in dispute, which lands total 13,426 square feet – compared to the area of the West 58th Street property totaling 7710 square footage, the amount of public land will be increased by 5716 square feet.

Accordingly, in light of the public interest served thereby, it is recommended that the City Commission approve the present request to vacate the subject portion of West 57th Street, easterly of Alton Road.

JMG\RCM\sam

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Attachments

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING ON FIRST READING THE REQUEST OF LA GORCE COUNTRY CLUB (AND RELATED CITY APPLICATION) FOR VACATION OF A PORTION OF WEST 57th STREET EASTERLY OF ALTON ROAD LOCATED IN THE CITY OF MIAMI BEACH, PROVIDING FOR WAIVER OF VACATION APPLICATION FEE AND WAIVER BY 5/7^{ths} VOTE OF THE COMPETITIVE BIDDING AND APPRAISAL REQUIREMENTS (AS PROVIDED IN SECTION 82-39 OF THE MIAMI BEACH CITY CODE), FINDING SUCH WAIVER TO SERVE THE CITY'S BEST INTEREST, AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE ANY AND ALL DOCUMENTS TO EFFECTUATE THIS VACATION INCLUDING A QUIT CLAIM DEED AND UTILITY EASEMENT; SETTING A PUBLIC HEARING TO BE HELD CONCURRENT WITH SECOND AND FINAL READING OF THE CITY'S RESOLUTION APPROVING THE SUBJECT VACATION TO BE HELD AT THE CITY COMMISSION MEETING OF MARCH 18th 2009 FOR PURPOSES OF OBTAINING PUBLIC COMMENT THEREON.

WHEREAS, at its January 28, 2009 City Commission meeting, the Mayor and City Commission approved and authorized execution of a Settlement Agreement in Frank Otero and Jeffery Gibbs v. City of Miami Beach, La Gorce Country Club, and D.M. Fence Corp., 11th Judicial Circuit Court, Case No. 05-17754 (CA 30), which Agreement provides in part that La Gorce Country Club Inc. ("LaGorce") will seek vacation, reserving to the City a utility easement, of that portion of West 57th Street easterly of Alton Road legally described as:

Portion of West 57th Street bounded as follows: bounded on the north by the south line of Lot 9, Block 9; bounded on the South by the North line of Lot 1, Block 11; bounded on the East by the Northerly extension of the East line of said Lot 1, Block 11; and bounded on the West by the East right of way line of Alton Road. All as shown in La Gorce-Golf Subdivision, Plat Book 14, Page 43, Public Records of Miami Dade County, Florida. Said Lands located, lying and being in Section 15, Township 53 South Range 42 East, City of Miami Beach, Miami Dade County, Florida¹

with City to waive application fee and to waive appraisal and bidding by 5/7^{ths} City Commission vote at time of vacation proceedings pursuant to City Code section 82-39, upon a finding that such waiver serves the City's best interest; and

WHEREAS, the Settlement Agreement further requires that the City consider said vacation application pursuant to conditions established in the City Charter and Code, requiring 4/7^{ths} approval of Planning Board and 5/7^{ths} approval of City Commission at public hearing; and

WHEREAS, La Gorce Country Club submitted its request for vacation of the subject portion of West 57th Street, and the City's application filed pursuant thereto, along with the required Planning Department study² was considered by the Planning Board at it's February 24, 2009 meeting; and

¹ Survey of subject property attached hereto as "Exhibit A".

² Planning Department study attached hereto as "Exhibit B".

WHEREAS, pursuant to Miami Beach City Code section 82-37 governing the sale (including vacation of public right of way) and/or lease of public property, prior to vacation of City property the Mayor and City Commission shall "...have read the title of the Resolution approving such sale and/or lease on two separate dates and immediately following the second reading hold a public hearing, advertised not less than 15 days prior to the hearing, in order to obtain citizen input into any proposed sale and/or lease."

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that La Gorce Country Club's request (and related City application) for vacation of the subject portion of West 57th Street easterly of Alton Road in the City of Miami Beach is hereby approved on first reading, at which reading the title of the Resolution approving the subject vacation was read, which Resolution authorizes the waiver of vacation application fee as well as waiver of appraisal and bidding by 5/7th Commission vote, finding such waiver to serve the City's best interest, and further authorizes the Mayor and City Clerk to execute any and all documents to effectuate this vacation including a quit claim deed and utility easement. A public hearing to hear public comment regarding the proposed vacation shall be held concurrent with second and final reading of the City's Resolution approving the subject vacation request at the March 18, 2009 City Commission meeting.


PASSED AND ADOPTED this 25th day of February, 2009.

ATTEST:

Matti Herrera Bower
Mayor

Robert Parcher
City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

2/4/09

Date

1
JD

**STEARNS WEAVER MILLER
WESSLER ALHADEFF & SITTERSON, P.A.**

Miami ■ Ft. Lauderdale ■ Tampa

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(305) 789-3200

January 30, 2009

Via Facsimile and U.S. Mail

Jean Olin, Esquire
Office of City Attorney
City of Miami Beach
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

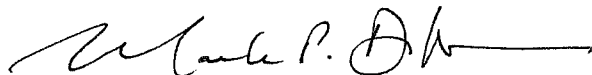
**Re: *Gibbs and Otero vs. La Gorce Country Club et al.*
Case No. 05-17754-CA-30**

RECEIVED
09 FEB -2 PM 2:49
CITY ATTORNEY'S OFFICE

Dear Ms. Olin:

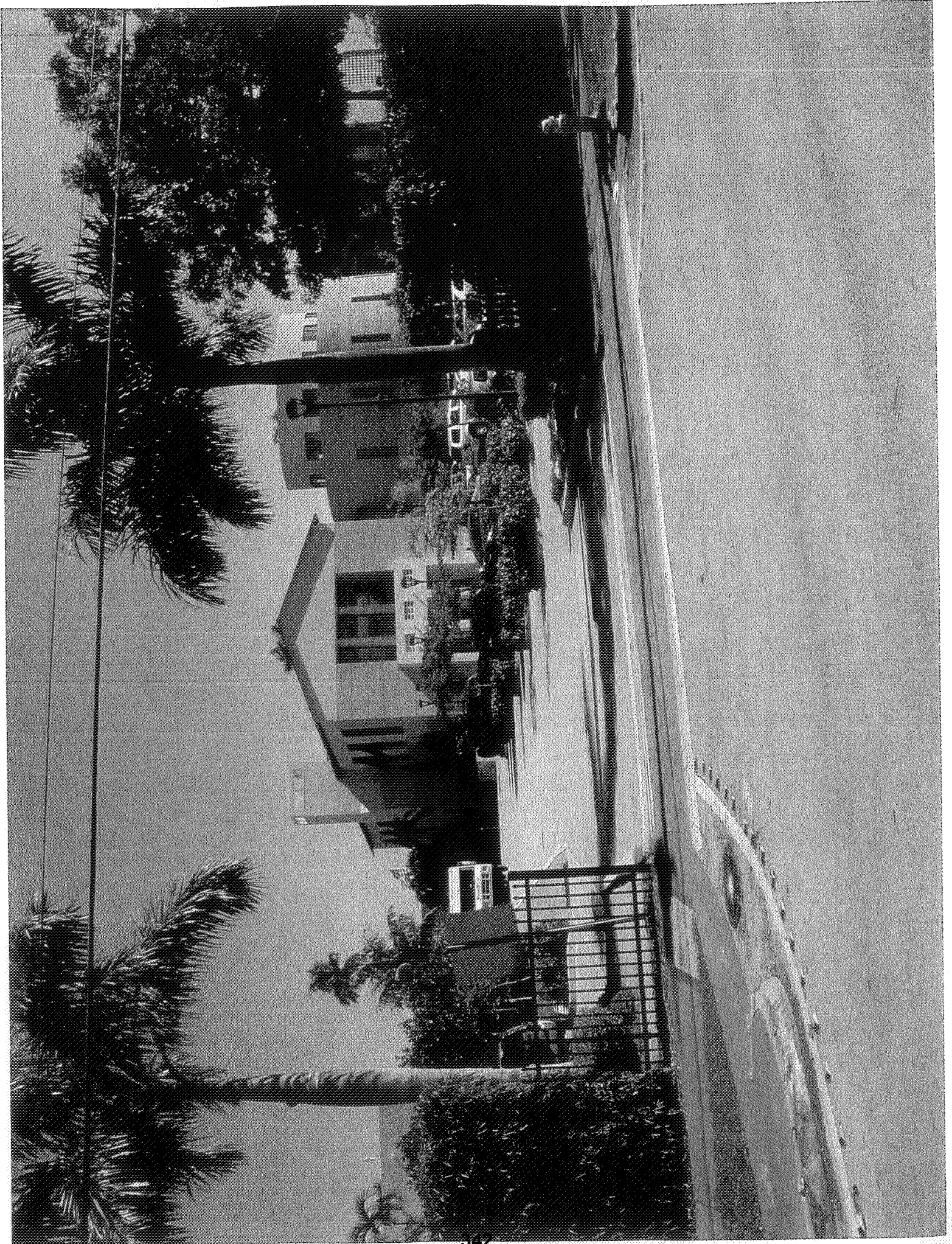
Pursuant to the Settlement Agreement in the above referenced matter and on behalf of La Gorce Country Club Inc., La Gorce hereby submits its Vacation Application to the City of Miami Beach for the vacation of West 57th Street easterly of Alton Road. The proposed present use is continuation of the existing use as a parking lot for the clubhouse.

Sincerely,



Mark P. Dikeman

MPD:smf





MIAMI BEACH

PLANNING DEPARTMENT Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: February 24, 2009

FROM: Jorge G. Gomez, AICP 
Planning Director

SUBJECT: File No. 1919 – Portion of West 57th Street, easterly of Alton Road.

The applicant, the City of Miami Beach has filed an application (pursuant to request by La Gorce Country Club, Inc.) for vacation of a portion of the West 57th Street street-end Easterly of Alton Road.

Legal Description: Portion of W. 57th Street bounded as follows: bounded on the North by the South line of Lot 9, Block 9; bounded on the South by the North line of Lot 1, Block 11; bounded on the East by the Northerly extension of the East line of said Lot 1, Block 11 and bounded on the West by the East right-of-way line of Alton Road, all as shown in La Gorce-Golf Subdivision, Plat Book 14, Page 43, Public Records of Miami-Dade County, Florida, said lands located, lying and being in Section 15, Township 53 South Range 42 East, City of Miami Beach, Miami-Dade County, Florida.

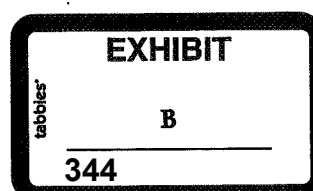
ANALYSIS

Pursuant to Miami Beach City Code Section 118-51(11), the Planning Board is charged with the review and approval of the sale, exchange, conveyance or lease of ten years or longer of certain city-owned property, as provided in City Charter, subsection 1.03 entitled, "Alienability of property," subsection (b) 3, requiring approval by a majority (four-sevenths) vote of all members of the Planning Board and a super-majority (five-sevenths) vote of the City Commission. Inasmuch as a vacation request constitutes both a "conveyance" and a "sale" of City property (pursuant to Chapter 82 of the City Code), the requested vacation of this street-end falls within the scope of the City Charter calling for 4/7ths Planning Board approval. (The City Commission's approval is subject to requirements contained in City Code Chapter 82, Article II, Sale or Lease of Public Property.)

In reviewing this application, the Planning Board is required by City Code to consider the following criteria, when applicable, which are analyzed below:

- a. **Whether or not the proposed use is in keeping with City goals and objectives and conforms to the City Comprehensive Plan.**

The request to vacate the subject portion of West 57th Street, easterly of Alton Road, in favor of the La Gorce Country Club has been made pursuant to a settlement agreement approved by the City Commission on January 28, 2009. The settlement agreement provides that if vacation is approved, the Country Club will deed to the City eleven 20' strips of land,



the title of which were at issue in the litigation. The proposed use of the street-end after its vacation is exactly as it is used today and for the past few decades, as part of the entrance and parking lot to the La Gorce Country Club. The property no longer functions as a street-end. Its vacation is consistent with City goals and objectives, in that acknowledging its use as it exists will resolve a dispute with the abutting property owners and Country Club as to ownership and control of it and other properties in the vicinity.

The portion of the street-end being vacated is not designated ROS, Recreational Open Space in the Future Land Use Map of the Comprehensive Plan, and its vacation is not inconsistent with any of the Plan's goals, objectives or policies, and thus the proposed vacation conforms to the Comprehensive Plan.

- b. **If a sale, a determination as to whether or not alternatives are available for the acquisition of private property as an alternative to the proposed disposition or sale of city-owned properties, including assembly of adjacent properties, and impact of such assemblage on the adjacent neighborhood and the city in general.**

No alternatives are available for the acquisition of private property as an alternative to the proposed disposition of the street-end.

- c. **The impact on adjacent properties, including the potential positive or negative impacts such as diminution of open space, increased traffic, adequate parking, noise level, enhanced property values, improved development patterns, and provision of necessary services.**

The vacation of the easterly street end of West 57th Street will not have any impact on adjacent properties, and will acknowledge its role is no longer as a street-end, but is as part of the entrance and parking lot for the La Gorce Country Club. The area in question is surface driveway and parking area only, and its vacation and use as such will have no impact on open space, traffic, parking, and noise or property values in the area. Moreover, the City's historical use of the subject portion of West 57th Street has been for placement of underground utilities, which use will continue in the event vacation is approved via the grant by La Gorce to the City of a perpetual Utility Easement.

- d. **Determination as to whether or not the proposed use is in keeping with the surrounding neighborhood, blocks views or creates other environmental intrusions, and evaluation of design and aesthetic considerations of the project.**

The proposed vacation is in keeping with the surrounding neighborhood, and will not block views or create any environmental intrusions.

- e. **A traffic circulation analysis and plan that details the impact of projected traffic on the immediate neighborhood and how this impact is to be mitigated.**

The proposed vacation is consistent with traffic circulation and projected traffic in and around the immediate neighborhood, as the property is already functioning as the entrance and parking lot of the La Gorce Country Club. No adverse impact exists or is projected that needs to be mitigated.

- f. **Determination as to whether or not the proposed use is in keeping with a public purpose and community needs, and improving the community's overall quality of life.**

The vacation of the easterly street end of West 57th Street and allowing its continued use as the entrance and parking lot for La Gorce Country Club is in keeping with a public purpose and community needs. The vacation will place the property on the tax roll, and further allow a long and costly litigation to conclude in keeping with a public purpose of reducing cost and expenses to the taxpayers of the City. In addition, If vacation is approved, the City will receive as part of the settlement, a utility easement over the vacated portion of West 57th Street for its underground utilities, and a quit claim deed for eleven of the subject 20 foot strips of land in dispute bordering the golf course easterly of Alton Road and located at West 52nd Street, West 53rd Street, West 54th Street, West 56th Street, West 58th Street, West 59th Street, and West 60th Street, and further bordering westerly of the golf course and La Gorce Drive, located at West 58th Street, West 59th Street, West 60th Street and West 61st Street; these eleven strips of property total 13,426 square feet of land, which compared to the 7,710 square feet of the subject portion of West 57th Street, will result in a gain of 5,715 square feet of land for public use.

- g. **If a lease is proposed, the duration and other nonfinancial terms of the lease.**

Not applicable.

STAFF RECOMMENDATION

In view of the above analysis, the documents presented with the application and the recommendation from the City Attorney's Office, staff recommends approval of the vacation of the West 57th Street street-end, easterly of Alton Road.

JGG/ML

- c: Gary Held, First Assistant City Attorney

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